

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL VILLALOBOS and U.S. POSTAL SERVICE,
AIR MAIL CENTER, San Francisco, Calif.

*Docket No. 96-271; Submitted on the Record;
Issued January 16, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability on January 27, 1995, causally related to his April 15, 1994 employment injury.

On April 17, 1994 appellant, then a 36-year-old mail handler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on April 15, 1994 he strained his back while lifting mail. Appellant stopped work on April 18, 1994. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar strain.

Appellant received treatment following his injury from Dr. Richard Witzig, a general practitioner and appellant's treating physician, who released appellant to return to light-duty employment on April 21, 1994. Appellant returned to his regular employment duties on July 21, 1994. Dr. Witzig released appellant from further medical treatment on August 4, 1994.

On January 31, 1995 appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation (Form CA-2a) alleging that on January 27, 1995 he sustained a recurrence of disability causally related to the April 15, 1994 employment injury. The claim form indicates that appellant stopped work on January 27, 1995 and returned to work on January 31, 1995. Appellant related that he believed his injury was a recurrence of the original injury because the pain and symptoms were in the same area of the original injury.

In a report dated January 27, 1995, Dr. Witzig found that appellant was unable to return to work until February 2, 1995 due to a low back strain. In an injury follow-up report of the same date, he diagnosed low back strain and noted that appellant was discharged August 4, 1994 from the original injury of April 19, 1994.¹ In a patient status report form dated January 30, 1995, Dr. Witzig noted that appellant could return to modified duty with restrictions on

¹ Apparently this date refers to the original injury of April 15, 1994.

January 31, 1995.² Dr. Witzig released appellant to unrestricted full-time work on April 14, 1995.

By letter dated March 22, 1995, the Office informed appellant of the definition of a recurrence of disability and notified him that if he sustained a new employment-related injury he should file a claim for the new injury. The Office requested that appellant supply factual information surrounding his claimed recurrence of disability and submit a rationalized medical report from his physician discussing “the relationship of your current condition to the accepted injury.” The Office additionally provided a form listing the issues which appellant’s physician must address.

Appellant submitted Dr. Witzig’s medical report of April 14, 1995, in which the physician responded to the Office’s inquiries. Dr. Witzig noted that appellant was seen on January 27, 1995 complaining of discomfort in his lower back and that the pain had become progressive. Dr. Witzig wrote that appellant had been discharged to return to his regular work on August 5, 1994 after experiencing the same complaints which originated on April 15, 1994. Dr. Witzig opined that handling heavy mail precipitated the recurrence. He additionally stated that this area [of appellant’s back] may be prone to recurrent symptomatology.

In a decision dated April 21, 1995, the Office denied appellant’s claim on the grounds that the evidence failed to establish that his present disability was causally related to his original work injury of April 15, 1994. The Office noted that appellant’s physician, Dr. Witzig, identified new work factors, the handling of heavy mail, as the cause of appellant’s current condition and, thus, appellant had not experienced a recurrence, but may have sustained a new occupational illness.

By letter dated June 16, 1995, appellant requested reconsideration of his claim. He stated that his normal duties have always included the handling of “heavy mail” and, thus, disputed the Office’s finding that the handling of heavy mail was a new work factor. In support of his request for reconsideration, appellant submitted Dr. Witzig’s letter of May 17, 1995 in which Dr. Witzig stated that he believed appellant’s injury of January 27, 1995 was a recurrence of the April 15, 1994 injury. Dr. Witzig further stated that there were no new factors in appellant’s job requirements in April 1994 and in January 1995 as part of appellant’s job requirement is to handle heavy mail. Dr. Witzig further clarified his letter of April 14, 1995 where he stated that “handling heavy mail had precipitated the recurrence” by stating that the job of heavy mail lifting, in general, created the spontaneous recurrence.

In a decision dated July 20, 1995, the Office denied appellant’s request for reconsideration without reviewing the merits of the claim, on the grounds that the evidence was insufficient to warrant review of the prior decision.

The Board finds that appellant has not established that he sustained a recurrence of disability on January 27, 1995, causally related to his April 15, 1994 employment injury.

² In patient status report forms dated March 15 and March 30, 1995, Dr. Witzig gradually released the restrictions on appellant’s modified duty.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable and probative evidence that the recurrence of the disabling condition for which he seeks compensation was causally related to the accepted employment injury.³ As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related injury.⁴ Causal relationship is medical in nature and, generally, can be established only by medical evidence.⁵

Appellant sustained an April 15, 1994 employment injury which the Office accepted for lumbar strain. He stopped work on April 18, 1994, returned to light-duty employment on April 21, 1994, and resumed his regular employment duties on July 21, 1994. On January 31, 1995 appellant filed a notice of recurrence of disability beginning January 27, 1995 and attributed his disability to his April 15, 1994 traumatic injury.

In a recurrence of disability situation, generally no event other than the previous injury accounts for the disability.⁶ A recurrence of disability is a spontaneous return to disability due to the original employment injury with no intervening causes involved.⁷ In the instant case, appellant has submitted medical evidence indicating that his condition resulted from lifting at work after he was released from treatment for his accepted injury.

In support of his recurrence of disability claim, appellant submitted medical reports from Dr. Witzig, his treating physician. The reports of Dr. Witzig suggest that appellant's claimed recurrent back condition may be due to continuing factors of his employment. As noted above, in a recurrence of disability, the previous injury is generally the sole cause of the disability. In a report dated April 14, 1995, Dr. Witzig found that "handling the heavy mail has precipitated the recurrence." In his report dated May 17, 1995, Dr. Witzig stated that the job of heavy mail lifting created the spontaneous recurrence as there were no new factors in appellant's job requirements from April 1994 and January 1995. The reports of Dr. Witzig indicate that appellant's normal working conditions of handling heavy mail contributed to appellant's condition but fail to shed light on how appellant's "recurrence" resulted from the specific work incident of April 15, 1994. Moreover, while Dr. Witzig generally attributes appellant's back condition to the prior employment injury, the fact that he implicated normal lifting as part of his duties in causing the recurrence of disability, tends to support a new occupational injury rather than a recurrence of disability due to the April 15, 1994 accepted employment injury.

The Board notes that the definition of a recurrence of disability does not include a work stoppage caused by a "*new injury, even if it involves the same part of the body previously*

³ *Jessie Johnson, Jr.*, 39 ECAB 945 (1988).

⁴ *Id.*

⁵ *Armando Colon*, 41 ECAB 563, 565 (1990); *Ausberto Guzman*, 25 ECAB 362, 364 (1974).

⁶ *See William R. Lance*, 18 ECAB 422, 428 (1967).

⁷ *Stephen J. Perkins*, 40 ECAB 1193 (1989).

injured ...,”⁸ (Emphasis added.) whereas a recurrence of disability is defined to include “A spontaneous material change, ... in the medical condition which resulted from a previous injury ... *without an intervening injury.*”⁹ (Emphasis added.)

Since appellant bears the burden of establishing that the condition and disability for which compensation is claimed is due to the April 14, 1994 accepted employment injury,¹⁰ the Office properly denied appellant’s claim for a recurrence of disability.

However, the Board finds that the case is not in posture for decision with regard to the issue of whether appellant sustained a new injury, namely, an occupational disease to his lower back. The Office has indicated that the circumstances of appellant’s claim for a recurrence of disability beginning January 27, 1995 may actually constitute a new occupational disease. This is supported by the reports of Dr. Witzig who indicated that appellant’s day-to-day job duties of handling heavy mail precipitated his condition. There are no medical reports of record negating causal relationship between appellant’s low back condition and his employment. Thus, the handling of mail by appellant over a period of time may constitute a new occupational disease as contrasted from a recurrence of disability.

Although appellant did not specifically file a claim for occupational disease, the Board finds that the contemporaneous medical evidence and appellant’s statements implicating a lower back condition allegedly due to heavy lifting at work required the Office to adjudicate this aspect of appellant’s claim.¹¹ As the Office failed to decide this matter, the Board finds that the case is not in posture for decision and must be remanded to the Office for adjudication of the issue of whether appellant sustained a new occupational injury between his release to regular duty on July 21, 1994 and the date that he stopped work, January 27, 1995.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (January 1995).

⁹ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

¹⁰ See *Clifford C. Hall*, 6 ECAB 509, 510 (1954).

¹¹ See *Joseph J. Arseneau*, 14 ECAB 245, 246 (1963) (stating that letters from a claimant are as much a part of his claim as contentions made by him in the claim form itself); *Peter Abate*, 8 ECAB 539, 540 (1956) (finding that letters from a claimant and his attorney in amplification of a claim are as much a part of the claim as the claim form itself); see also *Barbara A. Weber*, 47 ECAB ____ (Docket No. 94-1047, issued November 1, 1995).

The decisions of the Office of Workers' Compensation Programs dated July 20 and April 21, 1995 are hereby affirmed in part and set aside and remanded in part in accordance with this decision.

Dated, Washington, D.C.
January 16, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member